

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KAREEM MITCHELL,

Plaintiff,

-v.-

WARDEN COOKE, ANNA M. KROSS
CENTER ET AL.,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 5/16/2024

23-cv-4348 (LJL)

ORDER

LEWIS J. LIMAN, United States District Judge:

Plaintiff's motion for leave to amend, Dkt. No. 28, is GRANTED. Although Defendants contend amendment is futile because the Third Amended Complaint will not "pass muster under [Rule] 12(b)(6)," Dkt. No. 29 at 2, "[t]he Court is 'not prepared to find' that amendment would be 'obviously futile' and, indeed, is 'persuaded that it would benefit from further briefing' (should Defendant[s] choose to move for dismissal)," *Iglesias v. HRA Pharma Am., Inc.*, 2023 WL 5277424, at *2 (S.D.N.Y. Aug. 16, 2023) (quoting *Patterson v. Morgan Stanley*, 2017 WL 11569235, at *2 (S.D.N.Y. Sept. 27, 2017) (Sullivan, J.)). Thus, pursuant to Paragraph 3(C) of the Court's Individual Rules of Practice in Civil Cases, the previously-filed motion to dismiss is DENIED as MOOT.

Consistent with *Valentin v. Dinkins*, 121 F.3d 72, 76 (2d Cir. 1997), the City Law Department is ordered to ascertain the identity and badge numbers of Defendants Jane Doe, CO Davis, and CO Guzman.¹ The Law Department must provide this information to Plaintiff and

¹ If these defendants are current or former DOC employees or officials, the Law Department should note in the response to this order that an electronic request for a waiver of service can be made under the e-service agreement for cases involving DOC defendants, rather than by personal service at a DOC facility. If these defendants are not current or former DOC employees or

the Court within sixty days of this order. Within thirty days of receiving this information, Plaintiff must file a fourth amended complaint properly naming those three Defendants. Once Plaintiff has filed a fourth amended complaint, the Court will, if necessary, issue an order asking those Defendants to waive service.

The time for Defendants to answer or move to dismiss is stayed until the earlier of the filing of the fourth amended complaint or a submission from Plaintiff indicating that he does not wish to proceed against the unserved Defendants but instead proceed only under the Third Amended Complaint.

The Clerk of Court is respectfully directed to close Dkt. Nos. 23 and 28 and to mail a copy of this order to Plaintiff.

SO ORDERED.

Dated: May 16, 2024
New York, New York



LEWIS J. LIMAN
United States District Judge

officials, but otherwise work or worked at a DOC facility, the Law Department must provide a residential address where the individuals may be served.